more than 10 years ago. In the words of Roman lawyers, *"Interest reipublicae ut sit finis litium"*.

I have also examined this case in its proper perspective and consider that in all the circumstances of this case it was unsafe to convict the appellant upon the uncorroborated evidence of the accomplice and for the reasons above I allow the appeal and set aside the conviction and sentence.

The cross-appeal is dismissed. The fine of $5,000 is to be refunded to the appellant.

Appeal allowed.

Solicitors: *Kumar, Chan & Chia.*

CHIN KIM CHANG v. MARIADASS & ANOR.

[O.C.J. (Chang Min Tat J.) April 19, 1977]
[Kuala Lumpur — Originating Motion No. 49 of 1975]

Employment — Domestic servants, — Guest house — Employment Ordinance 1955, s. 69.

The respondents who were husband and wife first came into the employment of the appellant firm in answer to an advertisement for a cook and amah at a guest-house for the firm. They were interviewed by a Mr. and Mrs. Davies. Mr. Davies was then a financial controller of the firm and both of them with their three children were staying in the said guest-house. After the Davies the occupants of the house were transient guests, but they were all employees of the firm. The guests however had to pay for the food and drinks consumed by them at fixed rates. The Assistant Commissioner of Labour had allowed the respondents' claim in full for overtime and for pay in lieu of leave which the respondents said they were entitled to but were not given. The issue was whether the respondents were labourers in a guest house or domestic servants. On appeal by the employer through its secretary,

Held, allowing the appeal: it must be an inevitable conclusion that the guest-house of the appellant firm was not a public dwelling house but a private dwelling-house and that the respondents were domestic servants employed in a private dwelling-house. Their claim therefore must fail.

ORIGINATING MOTION.

N.J. Thakurdas for the applicant.

K. Chandra for the respondents.

Chang Min Tat J.: This is an appeal by the employer through its secretary from the decision of the Asst. Commissioner of Labour to allow the respondents' claim in full for overtime and for pay in lieu of leave which the respondents said they were entitled to but were not given. The respondents' claim was made under section 69 of the Employment Ordinance 1955. The issue was whether the respondents were or were not domestic servants. If they were not, then by statutory provision in section 58, they were not labourers entitled to the regulations for rest days, hours of work, holidays and other conditions of service in Part XII of the Ordinance.

There is no doubt that the respondents who are husband and wife first came into the employment of the appellant firm in answer to an advertisement for a cook and amah at No. 5 Jalan U Thant, Kuala Lumpur which the respondents admitted was a guest-house for the firm. They were interviewed by Mr. & Mrs. Davies. Mr. Davies was then the financial controller of the firm and both of them with their three children were staying in this guest-house. Though they claimed that their salaries were paid to them by Mr. & Mrs. Davies for the six weeks the Davies resided there, and later by a Mrs. Betty Tan, the Secretary, who succeeded them, there can equally be no doubt that the salaries were in fact paid by the firm, and that the respondents were employees of the firm. After the Davies, the occupants were transient guests, but they were all employees of the firm. The guests however had to pay for the food and drinks consumed by them at fixed rates.

On the evidence, it is just as clear that the character of their employment did not change. They continued to work as cook and amah. But the respondents claimed that after the departure of the Davies, the nature or the label of their employment had changed from personal domestic servants of the Davies to labourers in a house run as a guest-house, and they had thereby become labourers so as to come within the provisions of Part XII of the Ordinance.

The definition of "labourer" in the Ordinance is spelled out in the First Schedule and so far as it is relevant for the purposes of this case reads:

"Any person skilled or unskilled, other than a domestic servant, ... who has entered into a contract of service with an employer in pursuance of which he is engaged in manual labour...."

The Ordinance therefore excludes domestic servants from Part XII. But it is clear from the definition of domestic servant in the Ordinance, he must be a domestic servant in a private dwelling-house.

On the evidence led by the respondents, the Asst. Commissioner of Labour came to a finding that "a guest-house used by a business concern like the defendant company — to cater for the needs of its employees cannot be deemed to be a private dwelling-house as defined in the Employment Ordinance." For myself, I am unable to find anywhere in the Ordinance any definition of a private dwelling-house. It is therefore necessary to resort to first principles, but the matter is no nearer solution since apart from this finding, the Asst. Commissioner of Labour has given no reasoning. He could only be right if "private" refers strictly to an individual or a family as a basic unit. The question however is whether the unit extends to and includes a house such as the one in question run by the firm for the use of its transient employees. It is necessary to go back to the definition of domestic servant in the Ordinance. A domestic servant is defined as

"... a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use."

The definition is seen to be in two parts. The employment must be in a private-dwelling house and it must not be in connection with any trade, business or profession carried on by the employer in such dwelling-house. The second part is amply satisfied. No one can pos-

sibly claim or assert that the guest-house is in connection with the employer's trade, business or profession. As for the first part, it must be considered and realised that the flow of guests, restricted as they are to the employees of a business concern on visits to Kuala Lumpur, does not make the guest-house a public dwelling in the sense that it is for the use of the general public. The work the respondents do is the work of domestics. And I venture to believe that the work they do in this guest-house is rather less than the daily chore for a permanent residence. The purpose of the Ordinance in ensuring the proper remuneration and protection for employees of various classes is served without placing on the definition a false meaning. It must be an inevitable conclusion that the guest-house of the appellant firm is not a public dwelling-house but a private dwelling-house and that the respondents are domestic servants employed in a private dwelling-house. Their claim therefore fails.

This conclusion relieves me from having to deal with the complaint of the appellant that the claim of the respondents for overtime is too imprecise for determination.

The appeal is allowed with costs, but I venture to suggest that if no appeal is lodged from my decision, the appellant will not press for its costs.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Syarikat K. Chandra.*

TAN YEW LAI v. S. SHADIQUE

[O.C.J. (Chang Min Tat J.) April 19, 1977]
[Kuala Lumpur — Civil Suit No. 508 of 1971]

Landlord and Tenant — Tenancy at will — Oral agreement to lease 90 years — Oral agreement subject to written contract — Purchaser in possession.

The plaintiff was a housing estate developer. There was an agreement between the plaintiff and the defendant in respect of a house known as 217 Tan Yew Lai Gardens. It was evidenced partly in writing in the form of a receipt (dated January 29, 1969) for the first deposit of $3,950. It was captioned "Official Receipt" and acknowledged the receipt of the first payment for house No. 217. Inscribed on this receipt were the words "Cash Price $12,950, Loan $9,000, 90 years lease" and the additional words "This receipt is valued (sic) up to March 31, 1969." Despite attempts by the plaintiff to get the defendant to enter into a written agreement, the defendant had at all times failed and still failed to do so. The defendant did not move into occupation until November 1, 1969. The plaintiff claimed possession of the house and land and damages.

Held: (1) the agreement in this case was for a leasehold;

(2) no agreement crystallises where the parties failed at the time specified or within such time as may be reasonable in the circumstances to enter into such a written contract;

(3) in this case, the defendant had no claim either to the freehold or the leasehold of the house and she and her husband had no right to remain in the house or on the land. They were at all times tenants at will;

(4) the plaintiff was entitled to possession of the house and land and for damages but the deposit should be refunded to the defendant.

Cases referred to:-

(1) *Chillingworth* v. *Esche* [1924] 1 Ch. 97, C.A.

(2) *Eccles* v. *Bryant* [1948] Ch. 93 C.A.

CIVIL SUIT.

J. Somasundram for the plaintiff.

Bhag Singh for the defendant.

Chang Min Tat J.: The plaintiff is a housing estate developer. He owns a piece of land which he has had subdivided into building lots. He builds houses and sells them, sometimes together with the land and at other times on a lease of the lot.

There is an agreement between the plaintiff and the defendant in respect of a house now known as 217 Tan Yew Lai Gardens, Puchong, Kuala Lumpur. No dispute arises as to the existence of this agreement. It is evidenced partly in writing, in the form of a receipt for the first deposit of $3,950. It is captioned Official Receipt and acknowledges the receipt of the first payment for house No. 217. The date is January 29, 1969. However inscribed on this receipt are the words "Cash Price $12,950, Loan $9,000, 90 years lease," and the additional words "This receipt is valued (sic) up to March 31, 1969." There is no allegation that the superimposed words were not on the receipt when it was handed over to the defendant's husband, who, as husbands sometimes do, managed this particular transaction for her. The defendant's husband reads and speaks English.

Despite attempts by the plaintiff to get her to enter into a written agreement, the defendant has at all times failed and still fails to do.

At the time of the payment of the deposit, the house was not fully erected. The defendant did not move into occupation until November 1, 1969.

The plaintiff now claims as in the endorsement to the writ, "to recover possession of the house and land and for $808.68 for arrears of instalments on the purchase of the house and land rent, maintenance fees insurance and water supply up to May 20, 1971 and for payments in respect thereof from May 21, 1971 until the date of giving up possession and costs." There would appear to be a conflict between the claim to recover possession and the claim for arrears of "instalments" for the purchase of the house, but no point was taken. The statement of claim supplied certain purported terms of the agreement. The agreement was for the sale of a house and a lease for 30 years commencing from January 1, 1969, renewable twice on the following terms: (i) Cash price for the house $12,950; (ii) less deposit paid $3,950; (iii) the balance of $9,000 payable over 15 years at 10% interest per annum; (iv) the monthly instalments of $99 to commence from November 1, 1969; and (v) land rent payable was $120 per annum and (vi) maintenance fee at $96 per annum. These terms were conceivably not the only terms.

When it came to working out the balance owing from November 1, 1969 to May 20, 1971, the plaintiff claimed $326.70 for arrears of instalments and interest and a further sum of $481.98 for land rent, maintenance and insurance. The total came to $808.68